

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE NORTHERN ASSURANCE COMPANY  
OF AMERICA and AMERICAN HOME  
ASSURANCE COMPANY,

08 CV 3289 (CSH) (AJP)

Plaintiffs,

**Electronically Filed**

- against -

LAFARGE NORTH AMERICA, INC. and  
AMERICAN STEAMSHIP OWNERS MUTUAL  
PROTECTION AND INDEMNITY  
ASSOCIATION, INC.

Defendants.

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
NEW YORK MARINE AND GENERAL INSURANCE COMPANY'S  
MOTION TO INTERVENE AS A PLAINTIFF**

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**PRELIMINARY STATEMENT**

Plaintiffs The Northern Assurance Company of America (“NACA”) and American Home Assurance Company (“AHA”) respectfully submit this Memorandum of Law in Support of New York Marine and General Insurance Company’s (“NYMAGIC”) Motion to Intervene as a Plaintiff.

**FACTUAL BACKGROUND**

NACA and AHA adopt and incorporate by reference the factual and procedural background section contained in NYMAGIC’s Memorandum of Law in Support of its Motion to Intervene as a Plaintiff.

**ARGUMENT**

As more fully described in NYMAGIC’ motion papers, NYMAGIC has filed the present motion “to intervene as a plaintiff in this action as a lead underwriter under the Excess Policy and join in all four (4) causes of action asserted by American Home and Northern Assurance against the American Club in this action.” *See* NYMAGIC’s Memorandum of Law in Support of Motion to Intervene at p. 6.

As the lead underwriter of the Excess Policy, NYMAGIC has a significant stake in the outcome of this action inasmuch as any declaration, determination or decision rendered by the Court regarding the Subscribing Underwriters’ duties and obligations with respect to the Excess Policy will impact NYMAGIC, which as a lead underwriter has a 40% interest in the insured risk. Moreover, because NYMAGIC has ratified the commencement and prosecution of this declaratory judgment action by the following Subscribing Underwriters NACA and AHA, pursuant to Rule 17(a) of the Federal Rules of Civil Procedure, it has agreed to be bound by any

final judgment in this action. As such, NYMAGIC's participation in the action which was only recently filed, will ensure full development of the factual and legal issues involved in this matter.

### **CONCLUSION**

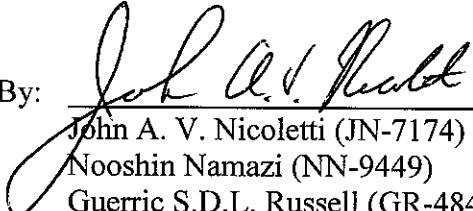
For the foregoing reasons and the reasons stated in NYMAGIC's Motion to Intervene, the Court should grant NYMAGIC's motion in its entirety.

Dated: July 31, 2008  
New York, New York

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